MOTION FILED
FEB 17 1987

Nos. 86-497 and 86-531

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

AGENCY HOLDING CORPORATION, et al.,
Petitioners,
v.
MALLEY - DUFF & ASSOCIATES, INC.,
Respondent.

CROWN LIFE INSURANCE COMPANY,
et al.,
Petitioners,
v.
MALLEY - DUFF & ASSOCIATES, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT

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MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

HMK Corporation, (hereinafter referred to as "the applicant"), by counsel, respectfully moves this Court for leave to file the following Brief of Amicus Curiae in Nos. 86-497 and 86-531. The questions of law which the applicant believes have not been presented and addressed by the parties in Nos. 86-497 and 86-531, and their relevancy to the disposition of these cases is set forth herein.

MOTION TO FILE BEYOND TIME LIMIT

The applicant moves this Court for leave to file its Brief of Amicus Curiae beyond the time limit. Counsel inadvertently failed to use Saturday, February 14, 1987 as a business day for the Court and filed instead on the next business day, Tuesday, February 17, 1987.

INTEREST OF AMICUS CURIAE

The applicant is the plaintiff/appellant in a civil action now pending before the United States Court of Appeals for the Fourth Circuit, styled HMK Corporation v. John C. Walsey, et al. (No. 86-3582). Among the issues involved in this controversy is the appropriate selection of a limitations period for civil RICO. The United States District Court for the Eastern District of Virginia, Richmond Division ruled that the one-year limitation available under Va. Code Ann. §8.01-248 (Repl. Vol. 1984) was to be applied to all civil RICO actions arising within the Commonwealth of Virginia. The argument advanced by the applicant that federal law should be utilized as the source of the limitations period was rejected by the district court. See HMK Corp. v. Walsey, 637 F.Supp. 710 (E.D. Va. 1986). The questions of law addressed in the following Brief of Amicus Curiae were raised by the applicant before both the district court and the United States Court of Appeals for the Fourth Circuit.

The applicant desires to bring to this Court's attention the arguments which support a selection of a limitations period for civil RICO by reference to federal

law consistent with the reasoning adopted by this Court in Del-Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 158-63 (1983). These arguments have not been addressed in the briefs filed herein by either petitioner.[1] These argument have been previously considered herein, however, and were addressed by Judge Sloviter in his concurring opinion in the court below. See 792 F.2d at 356.

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[1]. The applicant obtained the consent of the respondent to file it Brief of Amicus Curiae. Due to time limitations, the consent of the petitioners was not obtained.

SUMMARY OF ARGUMENT

Congress has not always provided the limitations period to be applied to the substantive rights that it has created. For over 150 years, federal courts have struggled with the question of how long a litigant's claim remains viable when the underlying federal statute prescribes no limitations period. In such instances, the federal courts do not assume that Congress intended that there be no limitations period applicable to the claim, but rather that the most suitable limitation be "borrowed" from another source.

In determining the source and specific limitations period to be used for "borrowing", the policies and purposes which limitations periods are designed to serve and effectuate must be reviewed and then applied to the particular federal claim before the court. From this analysis, the court can determine whether reference to state law or federal law for an appropriate limitations period best serves the ends which the federal substantive law was designed to achieve. In some instances, reference to state law as a source for a limitations period provides an unsatisfactory

method for enforcement of the federal substantive right. In such cases, this Court has approved reference to federal law to select an appropriate limitations period. See, e.g., DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983). Once the appropriate source for a limitations period is deter-mined, the federal substantive claim can then be analyzed and characterized so that the most analogous limitations period from within that source can be determined and applied.

When such an analysis is undertaken with regard to a civil claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968 (1982), the results favor reference to federal, rather than state law as the appropriate source for a limitations period.

Because of the unique multi-transactional, and oftentimes multi-jurisdictional, nature of civil RICO, it is impossible to obtain uniform or predictable results when reference is made to state law. The remedial goals of civil RICO are not served but are thwarted when state law is used as a source for the limitations period. When civil RICO is analyzed, it is the treble damage provision that stands out as its

most significant aspect. Accordingly, federal treble damage statutes, which uniformly provide for a four year limitation period, serve as the most appropriate limitations period to be applied and should be applied by this Court.

ARGUMENT

The Policy Considerations Which Limitations Periods Are Designed To Effectuate And Serve Dictate That Clarity To The Litigants Is the Most Important Aspect To Be Preserved.

Limitations periods are designed to effectuate and serve several broad, overlapping goals. The practical effect of a limitations period is to deny relief to the plaintiff if sufficient time has elapsed between the accrual of his cause of action and the commencement of his suit. This result occasionally offends notions of fairness and justice by allowing the wrongdoer to escape liability and leaving the injured party without remedy or relief. To justify this occasionally offensive result, various justifications have been articulated and various interests of the plaintiff, the defendant, the judicial system and society as a whole have been identified as being served by the imposition of limitations periods.

First, the limitations period serves to protect the reasonable expectations of the litigants. The plaintiff is informed of the period of time that he has to prepare and bring his suit. The

defendant is informed of the duration of his exposure to liability. At the conclusion of the limitation period, there comes a time when either party can be secure in his expectation that "the slate has been wiped clean." In a society based upon thousands of interpersonal transactions each day, it is desirable for all parties to a transaction or claim to terminate contingent liabilities at a specific, clearly defined point in time.

Limitations periods also serve the judicial system as matters of convenience and credibility. With increases in the caseload facing the judiciary, limitations periods reduce the number of potential claims awaiting resolution. Those claims in which it is more likely that memories have faded or documents and witnesses have been lost are barred from further litigation. Such a result diminishes the risk of perjury or fraud and allows judicial decision-making to be based upon a full and fair presentation of the facts.

It can never be forgotten, however, that the selection and application of a limitations period involves matters and questions of procedure, not substance. It is important, therefore, that

questions involving the selection and application of a limitations period involve as little uncertainty as possible and that courts, when faced with these questions, follow principles of law designed to bring clarity to the questions before them. When there is uncertainty regarding any matter of law, further litigation, with its attendant expense and delay, is encouraged. When there is uncertainty as to the outcome of a dispute, the parties are less likely to resolve the matter between them. Rather than protecting substantive rights, uncertainty in the law results in needless expense and delay. Such uncertainty puts a premium on creative lawyers and unlimited financial resources and suddenly, the law favors litigants who can afford long and expensive litigation to the disadvantage of the litigants whose substantive rights were in need of statutory protection.

Using clarity and the removal of uncertainty as the most important policy consideration of a limitations period, all of the various interests identified in judicial decisions are served. Courts are able to clearly signal to potential plaintiffs the amount of time that they have in which to prepare and bring their claim.

Defendants are clearly on notice as to the time period for which they are exposed to liability. All parties to the claim or transaction know the specific date when contingent liabilities are removed. When the selection and application of the limitations period is clear and not subject to uncertainty and continuing dispute, the judicial system is able to devote its resources to the substantive merits of the dispute rather than permitting justice to be delayed, or even forestalled by litigation of procedural matters.

The Civil RICO Cause of Action Is Unique and Unlike Any Pre-existing Statutory or Common Law Action

Contrary to the statement of the United States Court of Appeals for the Sixth Circuit in Silverberg v. Thompson McKinnon Securities, Inc., 787 F.2d 1079 (6th Cir. 1986), civil RICO is a unique statute unlike causes of action previously created by statute or known at common law. Unlike any single existing cause of action, civil RICO has application to a wide variety of predicate acts. Reference to §1961(1) reveals the breadth of

its scope.[2] Civil RICO has application to widely varying commercial transactions. These include the acquisition or establishment of an enterprise as well as its conduct and operation. While some nexus to interstate or foreign commerce is required, no other condition is provided that would limit the application of civil RICO to one sector of the economy or protect another sector of the economy from its reach. Under civil RICO, conduct that can only be punished as criminal upon proof beyond a reasonable doubt will nevertheless support civil sanctions under a lesser standard of proof. The remedy of treble damages provided to the successful plaintiff under §1964(c) further illustrates the uniqueness of the civil RICO claim. See generally, Note, Treble Damages Under RICO: Characterization and Computation,

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2. 18 U.S.C. §1861(1) defines "racketeering activity" to include nine state law felonies and violations of over 25 federal statutes, including those prohibiting bribery, counterfeiting, embezzlement of pension funds, gambling offenses, obstruction of justice, interstate transportation of stolen property and labor crimes.

61 Notre Dame L Rev. 526 (1986). Finally, the legislative history of RICO also illustrates the unique nature and character of civil RICO. Congress intended RICO to provide "new weapons of unprecedented scope." Russello v. United States, 464 U.S. 16, 26 (1983). In fact, it was the failure of existing law that led to the consideration and enactment of RICO, as existing laws were deemed to be inadequate.

The Interests To Be Protected by Civil RICO Are Best Served By A Uniform Limitations Period.

Once the policy considerations and principles which limitations periods are designed to serve are reviewed and the unique character and nature of civil RICO is recognized, the next step in the selection process for the appropriate limitations period is to determine whether the interests and goals of civil RICO are best served by characterizing a claim under civil RICO with reference to the underlying facts in each case or whether the interests to be protected by RICO are best served by a uniform characterization. The United States Court of Appeals for the Third Circuit in Malley-Duff & Associates, Inc. v. Crown Life Insurance Co., 792 F.2d 341 (3rd Cir.), cert. granted (Dec. 1,

1986), recognized the need for uniformity in determining the limitations period to be applied to civil RICO. Relying heavily upon this Court's decision in Wilson v. Garcia, 471 U.S. 261 (1985), the Third Circuit reasoned that a uniform characterization of civil RICO best fit and promoted the remedial purposes of the statute. When a particularized approach was taken, i.e., an approach which selected a limitations period based upon the particular facts of each case, consistent, reliable results were impossible to obtain as usually two or more limitations periods would apply. Reciting the experience found by federal courts in the handling of claims under 42 U.S.C. §1983 prior to Wilson v. Garcia, the Third Circuit noted that selection of the limitations period based upon "an analysis of the particular facts of each claim demonstrates that their approach inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of §1983." 792 F.2d at 347, quoting Wilson v. Garcia, supra, 471 U.S. at 272.

Applying this reasoning to civil RICO, the Third Circuit easily concluded that the interests to be protected by civil RICO were best served by a uniform

characterization and the application of a single limitations period to all civil RICO claims without regard to the underlying predicate acts relied upon or the underlying factual transaction from which the claim arose. Concepts required to state a claim under civil RICO, such as "pattern of racketeering activity", were unknown in the statutory and common law which predate RICO's enactment. Consequently, factual analogies to existing statutory or common law claims were unlikely to produce consistent or reliable results. Specific factual claims could easily be distorted by litigants and their counsel to avoid the application of one limitations period and attempt to qualify for another. Because civil RICO requires the commission of at least two predicate acts, a selection process which focuses on the specific factual basis of a civil RICO claim was likely to produce at least two or more limitations periods which could be applicable to the facts at hand. The result of such a selection process would be "complex and expensive litigation over what should be a straight forward matter." A.B.A. Section of Corporation, Banking and Business Law, Report of the Ad Hoc Civil RICO Task Force 391-92 (1985).

The Third Circuit recognized in Malley -Duff just as this Court did in Wilson v. Garcia, that "the legislative purpose to create an effective remedy for an enforcement of federal civil rights is obstructed by uncertainty in the applicable statute of limitations, for scarce resources must be dissipated by useless litigation on collateral matters." 792 F.2d at 349, quoting with approval Wilson v. Garcia, supra, 471 U.S. at 275. The Third Circuit concluded that civil RICO, like claims under §1983, "was intended to be a useful remedial device and a supplement to criminal law enforcement in an area peculiarly in need of federal intervention." Id. As such, uniformity and the selection of a uniform statute of limitations best served to protect its effectiveness.

Nationwide Uniformity Best Serves To Protect the Effectiveness of Civil RICO.

The United States Court of Appeals for the Third Circuit chose not to analyze in any depth or detail whether state law or federal law should serve as the source for a limitations period applicable to civil RICO. Having set forth compelling arguments that any selection process that permitted uncertainty would

encourage litigation and thwart the remedial purposes of civil RICO and that the interest of civil RICO were best served by uniformity, the Third Circuit was satisfied to conclude that a single uniform limitations period within the boundaries of a state was sufficient. The same reasoning that compels selection of a single limitations period for a particular state further compels the conclusion that the best choice is a single limitations period applicable to all civil RICO claims nationwide.

While resort to state law to borrow a limitations period is favored and has been traditionally followed by federal courts, it does not represent the only option available. This Court recognized in DelCostello v. International Brotherhood of Teamsters, 462 U. S. 151 (1983) that "when a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking, we have not hesitated to turn away from state law." 462 U.S. at 172. In analyzing civil RICO, there are several reasons to find that federal law is "a

significantly more appropriate vehicle" as well as several reasons to find that the application of state law is inconsistent with the underlying policies of the federal statute.

First, civil RICO by definition is multi-transactional; it requires the commission of two or more predicate acts without regard to the location of their commission. In order to satisfy the various definitions of "pattern" that have been developed since this Court's ruling in Sedima, S.P.R.L. v. Imrex Co., - U.S. -, 105 S.Ct. 3275 (1985), some separateness in time and place between the two or more predicate acts is required. Second, some nexus to interstate or foreign commerce is required as a jurisdictional element of a civil RICO claim. Therefore, in most claims under civil RICO the conduct complained of will cross state boundaries and the pattern of racketeering activity will be subject to multiple limitations periods. A litigant will have a choice of forums in which to bring

his claim and based upon the manner in which the claim is drafted, the litigant can influence which limitations period to which his claim is to be held.[3] Just as uncertainty as to the limitations period to be applied within a state was seen as thwarting the remedial purposes of civil RICO, so will the uncertainty of which limitations period is to be applied in a multi-jurisdictional claim. Just as litigants are encouraged to distort their claims to take advantage of one of several limitations periods within a state, likewise, they would be encouraged to distort their claims to take advantage of a forum that presents a more favorable limitations period. This process focuses attention on matters of procedure rather than the protection of substantive rights and favors litigants who can afford long and expensive litigation to the disadvantage of the poor and moderate litigants. Likewise, uniformity which ends at the state

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[3]. As an example, the Third Circuit noted in Malley - Duff supra, 792 F.2d at 353, n.20 that the allegations of Malley - Duff involved conduct in Cleveland, Ohio, Chicago, Illinois and other cities.

boundary encourages forum-shopping which is also to the disadvantage of the poor. Anytime that there is uncertainty, whether within a state or within a multi-state transaction, the remedial purposes which civil RICO was enacted to serve are not advanced but are thwarted.

This Court's Decision in Wilson v. Garcia Does Not Compel the Conclusion that Reference to State Law is Required.

As discussed by Judge Sloviter in his concurring opinion in Malley - Duff, there are reasons, consistent with this Court's analysis in Wilson v. Garcia, which favor the federal law result adopted in DelCostello rather than the state law approach taken in Wilson v. Garcia. Wilson v. Garcia involved the selection process for the limitations period to be applied to claims under 42 U.S.C. §1983. A comparison of §1983 claims with elements of a claim under civil RICO reveal that the policy considerations which made reference to state law appropriate in Wilson v. Garcia do not apply and are not present in civil RICO. Claims under §1983 usually involve a single act or transaction. Civil RICO by definition requires two or more acts which are separated in time and

place. In claims under §1983, the injury likely occurs at a single time and single place. Such a single-event injury under civil RICO is insufficient to establish a pattern. By definition, a claim under §1983 requires the presence of state action and for that reason is usually limited to a single state or governmental locality. A claim under §1983 does not require a nexus to or an affect upon interstate commerce. Of course, under civil RICO, the requirement of an effect upon interstate commerce is present while a requirement for state action is not. Because of the distinct differences between the cause of action under §1983 and civil RICO, it is clear that the result in Wilson v. Garcia is not applicable here.

Unlike §1983 which could be universally analyzed to a tort action for recovery of damages for personal injuries, civil RICO presents no such universally available or readily apparent state law analogy. As was evident by the opinion of the majority in Malley - Duff, there is usually no closely analogous state claim or state limitations period that could be readily agreed upon. A review of the prolific litigation in federal courts regarding the selection of a limitations period

further illustrates that no clearly recognized choice has emerged.

To the extent any specific analogy has been accepted more often than others, it is the "catch - all" limitations period utilized by the majority in Malley - Duff. There are several reasons, however, for rejecting this approach. First, this Court in Wilson v. Garcia rejected the use of a "catch - all" statute for application to claims under §1983. Second, the absence of a "catch-all" limitations period in some states distinguishes it from the personal injury characterization used in Wilson v. Garcia. Finally, several states have short periods assigned to their "catch-all" statute which would be inconsistent with the federal intention and policy to utilize civil RICO as an additional enforcement tool.[5]

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[5]. Judge Sloviter in his concurring opinion in A. J. Cunningham Packing Corp. v. Congress Financial Corp., 792 F.2d 330, 340 (3rd Cir. 1986), which was filed on the same date as Malley - Duff, noted: "Although Pennsylvania's catch-all of six other states might have a short catch-all which would be

Consequently, there is nothing in the language or the reasoning in Wilson v. Garcia that would limit the selection of a limitations period for civil RICO to those available under state law. To the contrary, there are strong policy considerations which favor a uniform limitations period which is applicable to civil RICO claims nationwide and which is applied uniformly without regard to the state in which the underlying transaction occurred.

The Legislative History of Civil RICO Does Not Reveal a Congressional Intent Against Nationwide Uniformity.

The United States Court of Appeals for the Sixth Circuit in Silverberg v. Thompson McKinnon Securities, Inc., supra, 787 F.2d at 1083, places great weight on its view of civil RICO's legislative history that "Congress specifically considered and rejected the enactment of a

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inconsistent with federal policy ...." See also Tellis v. United States Fidelity & Guaranty Co., 805 F.2d 741, 749 (7th Cir. 1986) (Ripple, J., Dissenting). Some "catch-all" statutes expire in as short a period as one year such as the limitation applied in HMK Corp. v. Walsey, 637 F.Supp. 710 (E.D. Va. 1986).

limitations period for civil RICO actions, thus declining to adopt a uniform limitations period for all RICO claims." Such is not the case.

It is incorrect to suggest, as the Second Circuit did in Sedima, that while RICO "for the most part originated in the Senate", the civil provisions permitting suit by private persons "originated in the House." Sedima, S.P.R.L. v. Imrex, Co. 741 F.2d 482, 488, rev'd, - U. S. -, 105 S.Ct. 3275 (1985). A review of the legislative history of the 1970 Act demonstrates the misconceived character of this view. First, Congress acted deliberately in its enactment of the Organized Crime Control Act. Congressional investigations, presidential commissions, and bar associations played major roles. The process originated in the hearings and reports of the Kefauver Committee. The American Bar Association formed its Organized Crime Commission and participated actively in the process, recommending model legislation.[6] In

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[6]. See, e.g., 2 Organized Crime and Law Enforcement (1953) (Final Report By and Model Acts Prepared for The ABA Commission on Organized Crime); Organized Crime

1967, the President's Commission on Law Enforcement and Administration of Justice made the key recommendation that led to RICO when it urged that Congress adopt antitrust type remedies to control underworld activities, particularly in legitimate business.[7] In response, Senator Hruska and Congressman (now Virginia Supreme Court Justice) Poff introduced companion legislation that included criminal and civil sanctions and public and private enforcement mechanisms in both Houses of the Congress. See e.g., S. 2048, 90th Cong., 1st Sess. (1967); 113 Cong. Rec. 17,999 (1967). The ABA carefully studied the bills and endorsed their private relief concepts, but recommended that the Congress draft RICO outside of the antitrust statutes to give its

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Control: Hearings Before Subcomm. No. 5, House Comm. on Judiciary, 91st Cong., 2d Sess. 579-85 (1970) (hereinafter House Hearings.).

7. The Challenge of Crime in a Free Society: Final Report of the President's Commission on Law Enforcement and Administration of Justice 208 (1967) ("techniques ... especially valuable because they require a less rigid standard of proof").

remedies and provisions a broader impact then that which would be appropriate in the regulation of the market under antitrust concepts. The ABA presented these recommendations to the House and the Senate in 1969.[8] Additionally, the National Commission on Reform of the Federal Criminal Law undertook similar studies. The Commission included Congressman Poff as its vice-chairman, and Senators McClellan and Hruska, as well as Congressman (now Judge) Mikva. Subsequently, Senator Hruska and Congressman Poff drafted new legislation that took the ABA at its word. They introduced this legislation in both Houses.[9] The Senate held hearings at which the ABA orally presented its favorable views. The President also endorsed the legislation while it was being processed in The Senate

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8. Measures Relating to Organized Crime: Hearings Before the Subcomm. on Crim. Laws and Procedures, Senate Comm. on Judiciary, 91st Cong., 1st Sess. 259 (statement), 556 (report) (1969); House Hearings at 537 (statement), 147 (report).

9. See, e.g., S. 1623, 91st Cong., 1st Sess. (1969); 115 Cong. Rec. 6,995-96 (1969).

and specifically called for antitrust-type remedies in his "Message on Organized Crime."

As a result of the hearings, Senators McClellan and Hruska, after consultation with Congressman Poff, introduced S. 1861. 115 Cong. Rec. 9,566-68 (1969). While S. 1861 did not include an express private claim for relief, it is erroneous to conclude that S. 1861 did not give rise to an implied claim for relief, or to argue that the sponsors of the legislation had rejected the concept of the private attorney general. Not one word in the remarks introducing the legislation supports this proposition.[10] The bill itself said in its Statement of Findings and Policy that it included "other relief." 115 Cong. Rec. 9,568 (1969). The legislation was termed "remedial" and its "liberal

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10. When Senator McClellan introduced S. 1861, for example, he said he did not want to see the "great complexity of antitrust law enforcement" introduced into the construction of RICO. 115 Cong. Rec. 9,567 (1969). That "complexity" is, of course, the jurisprudence on standing, which is applicable to private, not public enforcement.

construction" was mandated. Id. at 9,571. Accordingly, it should be concluded that the Organized Crime Control Act, as amended in Title IX to include the text of S. 1861, and as passed by the Senate, gave rise to an implied private claim for relief.[11] Not one word of legislative history can be cited to establish that Senators McClellan or Hruska - or any other senators - spoke against such a private claim for relief. The Organized Crime Control Act then passed the Senate by a vote of 73 to 1. 116 Cong. Rec. 972 (1970).

While the legislation was pending in the House, the President asked the ABA to study it. The ABA's views were presented to the House Committee in oral testimony by its president-elect, Edward L. Wright. He called for the House to restore to the bill the treble damage provision that had appeared in S.1623. House Hearings, at 543-44. The Committee was well aware

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11. See generally, Johnson, Predator Rights: Multiple Remedies for Wall Street Sharks Under the Securities Laws and RICO 10 J. of Corp. Law 3 (1984), Note, Availability of Equitable Relief in Cause of Action Under RICO 59 Notre Dame L. Rev. 945 (1981).

of the scope of the bill as passed by the Senate, since the Association of the Bar of the City of New York had objected in testimony before the House Judiciary Committee to its reach beyond "organized crime," including its application to "any securities fraud case." House Hearings, at 294. Moreover, Senator McClellan took the floor and called to the Senate's attention the ABA's recommendations; he explicitly characterized its recommendation for the restoration of the treble damage provision as a "constructive contribution." 116 Cong. Rec. 25,190 (1970).

The House Committee reported the Organized Crime Control Act in the enacted language. H. R. Rep. No. 1549, 91st Cong., 2d Sess. 56-58 (1970). Dissenting committee members, including Congressman Mikva, specifically objected to the private civil provisions' breadth, because the provisions were not limited to "organized crime." The dissenting members noted that the provisions were "a tool to be employed for all." Id. at 187. They also stressed the burden that this breadth might place on the courts. Id.

During the vigorous House debate, Congressman Steiger of-

fered a comprehensive amendment that included seven different provisions, not a single subject matter amendment relating only to statute of limitations as Silverberg implies. 787 F.2d at 1083).[12] Congressman Poff suggested that Steiger withdraw his amendment and Congressman Steiger quickly agreed. 116 Cong. Rec. at 35,346-47 (1970). The amendment was not "rejected" as Silverberg noted. As such, little can be inferred from the failure to adopt the Steiger amendment. Certainly, no Congressional intent against nationwide uniformity can be ascertained from Congressional in action.

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12. The Steiger amendment contained provisions that would have provided that no amount in controversy was required, clarified the availability of equity relief, included a claim for relief for damages for the government, repeated the private claim for treble damage relief, authorized the attorney general to intervene in private litigation, provided for non-mutual estoppel between government criminal and private civil cases, and imposed a uniform federal statute of limitations on RICO suits. 116 Cong. Rec. 35,346 (1970).

The Most Significant Aspect To Be Used To Characterize Civil RICO Is Its Provision for Treble Damages.

The treble damage provision under civil RICO, 18 U.S.C. §1964(c), has been recognized as its most significant aspect. See, e.g. Tellis v. United States Fidelity & Guaranty Co., 805 F.2d 741, 745 (7th Cir. 1986). It is the treble damage provision that draws most RICO plaintiffs to rely upon the RICO civil action.[13] It

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[13] Traditionally, damages have been classified into one of two catagories: compensatory or punitive. Treble damages under civil RICO, however, do not fit within either category. Like compensatory damages, treble damages under civil RICO are mandatory once the plaintiff establishes the right to recovery and the extent of injury. While the intent of treble damages is to compensate the plaintiff, they go beyond traditional compensatory damages and make the plaintiff whole for any accumulative harm, i.e., harm falling outside the range of legal damages as being too speculative or indeterminate for traditional damage principles. Unlike punitive damages, treble damages under civil RICO are not discretionary in amount or award.

is the treble damage provision that was intended to provide an incentive to private citizens to help law enforcement authorities police racketeering activity. The significance of the treble damage provision as the core of civil RICO was recognized by this Court in Sedima, supra, 105 S. Ct. at 3280-81.

Congress modeled civil RICO's treble damage provision after the anti-trust treble damage provision, §4 of the Clayton Act, 15 U.S. C. §15 (1982). This reflected a need to adopt a remedial scheme that would curtail and eventually eradicate the expansion of crime into the country's economy. In order to avoid restrictive principles in the anti-trust laws, however, Congress enacted civil RICO separate from the Clayton Act. The legislative history of §1964 (c) reveals that the foremost intent of Congress in enacting this provision was remedial, not penal. It was the congressional intent to compensate the victims of racketeering activity. The statute itself contains the

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They are not based upon an amount necessary to punish the wrongdoer and are not dependent upon willful or wanton conduct.

directive that its provisions "shall be liberally construed to effectuate its remedial purposes." The modern interpretation of the treble damage provisions contained both in civil RICO, and its model found in the Clayton Act, therefore, is that they are remedial in nature. Accordingly, when looking for a federal limitations period to apply to civil RICO reference to penal statutes and the limitations periods applicable thereto are not consistent with the remedial purposes of civil RICO and should not be utilized. Rather, statutes which contain analogous treble damage provisions better serve as reference points.

Reference to Federal Treble Damage Statutes Illustrates that the Limitation Period Under the Clayton Act Is The Most Analogous Period and Should Be Applied to Civil RICO

Once the analysis concludes that national uniformity is the best choice and that the most significant aspect of civil RICO is its treble damage remedy, reference to other federal treble damage claims provides the various

choices available.[14] The clearest analogy to RICO is the federal antitrust statutes. Civil RICO is a remedy provided by Congress to discourage repeated criminal behavior that results in economic injury and to fully compensate the victims of that injury for all accumulated harm. The civil remedy under §4 of the Clayton Act serves the same purpose. Both civil RICO and §4 of the Clayton Act seek to provide private civil actions for persons "injured in their business or property." Both utilize the same statutory language. The same goals, to remedy competitive injuries to business and to compensate victims for accumulative harm, underlie both statutes. Most importantly, Congress uses §4 of the Clayton Act as the model for the civil provisions of RICO as recognized by this Court in Sedima, S.P.R.L. V. Imrex, supra, 105 S. Ct. at 3280-81, 3282 n.8. Consequently, the limitations period found at 15 U.S.C. §15b should be uniformly

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14. Of those federal treble damage statutes which contain a limitations period, the period selected uniformly is four years. See 12 U.S.C. §1464(9)(3) (Home Owners' Loan Act); 12 U.S.C. §1977 (Bank Holding Company Act); 15 U.S.C. §15b (Clayton Act).

applied to all civil RICO actions.[15]

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15. See generally Note, A uniform Limitations Period for Civil RICO, 61 Notre Dame L. Rev. 495 (1986).

CONCLUSION

For the foregoing reasons, the applicant respectfully requests that this Court determine that the interests of RICO are best served by a uniform limitations period applicable to all civil RICO actions nationwide and that the four-year limitation contained in 15 U. S. C. §15b be selected and uniformily applied.

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